

REMARKS

Applicant thanks the Examiner for the care taken in examining the above-referenced application. Favorable reconsideration is respectfully requested in view of the above amendment and the following remarks. Claim 1 has been amended and claims 1-6 are currently pending. The amendment is fully supported by the specification, drawings, and claims as originally filed and no new matter has been added.

Rejections under 35 U.S.C. § 103

The examiner rejected claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Burnett (U.S. Patent No. 1,546,884) in view of Wilkening (U.S. Patent No. 4,515,146).

Applicant respectfully traverses this rejection to the extent that it is maintained, and reconsideration is requested in view of the above amendment and following comments.

Claim 1, as amended, recites a fireplace comprising a firebox 10 with a front wall 11 which at least partially covers the front opening of the firebox 10. A pivotal shelf 12 is attached to this front wall 11. The firebox 10 with front wall 11 combined defines the combustion chamber 30.

As best seen in Fig. 2, the firebox 10 with the front wall 11 mounted to the firebox defines an at least partially enclosed space. A burner assembly would be located within the combustion chamber 30. See Applicant's specification page 2 line 6. By including a front wall 11 with the firebox 10 a safe and efficient combustion chamber 30 is created. A front wall 11 is a wall that at least partially covers the opening of the firebox 10 and does not include any material or wall surrounding the periphery of the firebox 10.

In Burnett, the invention is directed to a vault that is insertable within a mantle 1. The term mantle 1 patent is used to define the area surrounding the periphery of a fireplace. See column 1 lines 38 through 43 of the Burnett specification. More importantly, in Burnett, the fireplace is not even associated with the mantle 1 and insertable vault. The fireplace is merely identified, not numbered, and otherwise not associated with the invention. See column 1 lines 40 through 44 and columns 3 and 4 lines 9 through 20.

Contrary to the assertions of the examiner the mantle 1 as defined in Burnett does not define the combustion chamber. The mantle 1 in the Burnett patent does not enclose the firebox and therefore it does not create an at least partially enclosed combustion chamber as described in

Applicant's claim 1. The closure plate (3) of Burnett is attached to the mantle which is a wall that is on the periphery of the fireplace not in front of the fireplace. The closure plate (3) is not attached to a wall that encloses the firebox thereby creating a combustion chamber. For Burnett to read on Applicant's Claim 1 would require the vault of the Burnett claim to be inserted into the combustion chamber. It is perhaps inherent that the closure plate (3) of Burnett in its open position would function as a shelf, but it is not inherent that the shelf in Burnett could be attached to the front wall of the combustion chamber. Specifically, as there is no wall in front of the firebox in Burnett upon which to attach the shelf closure plate (3). There is no teaching or suggestion in Burnett in combination with Wilkening to modify the fireplace by including a wall that at least partially encloses the combustion chamber and attaching a shelf to this wall.

Based on the foregoing, amended claim 1 is allowable and withdrawal of the Examiner's rejection is respectfully requested. Claims 2-6 depend from independent claim 1. Thus, these claims, which depend from an independent and now allowable claim, are also not obvious. Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-6.

Conclusion

Applicant submits that amended claim 1 and dependent claims 2-6 are in condition for allowance and withdrawal of the Examiner's rejections is requested. Notification of such allowance is respectfully requested. Applicant also notes that there may be additional reasons that the pending claims are patentably distinct from the cited references and reserves the right to raise any related arguments in the future.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claim 1 has been amended as follows:

1. (Amended) A fireplace comprising:
 - (a) a firebox;
 - (b) a front wall fastened to the firebox wherein the firebox and front wall define a combustion chamber and the front wall at least partially encloses the combustion chamber; and
 - (c) a shelf pivotally mounted to the front wall about a horizontal axis.